

I. Procedural Background

1. Complainant Frederick K. Piper filed a timely charge of marital status discrimination in housing against Respondent Robert Fortier with the New Hampshire Commission for Human Rights (Commission) on October 6, 1982. The complaint arises out of actions taken by Respondent beginning June 10, 1982.
2. Complainant later filed a retaliation charge against Respondent on November 12, 1982.
3. The two complaints were concurrently investigated and a finding of Probable Cause was made as to both charges by Commissioner Nancy Richards-Stower.
4. As all attempts at conciliation failed, a public hearing was held on February 7, 1984 before Hearing Commissioners Lionel Johnson, Robert J. Normandeau and Gail Paine.

II. Findings of Fact

The material facts of this case are essentially undisputed. On the basis of the testimonial and documentary evidence presented at the hearing, the Commission finds as follows:

1. Complainant is the owner of a mobile home which since at lease 1977 he has rented space for in Howard's Mobile Home Park located at 51 Hazel Drive, Concord, New Hampshire.
2. Howard's Mobile Home Park constitutes a "dwelling" within the meaning of RSA 354-A:3(10) and RSA 354-A:8, V.
3. Respondent is the owner of Howard's Mobile Home Park. Accordingly, Complainant is a tenant of Respondent.
4. Respondent has since at least 1979 maintained a policy of assessing a monthly surcharge on tenants who live with an unrelated additional occupant.
5. For the time period June 10, 1982 to the present Respondent's additional occupant monthly rental surcharge was \$10.

6. Respondent has not at any time applied this surcharge to additional occupants who are married to the tenant with whom they are living.
7. In 1979 Complainant was married and his wife began living with him in Respondent's trailer park.
8. Respondent did not assess a surcharge on Complainant for this additional occupant.
9. Sometime after 1979 Complainant's wife moved out of Complainant's trailer.
10. Since June of 1982 Complainant has had an additional occupant in his trailer who is neither his wife nor other family member. At times the additional occupant has been a female friend of Complainant. At the time of the hearing the additional occupant was a male friend of Complainant.
11. For each month since June of 1982 Respondent has assessed a \$10 monthly surcharge as a result of the presence of the particular additional occupant.
12. Although Complainant has paid his base rent for the period since June of 1982, he has not paid the \$10 monthly surcharge assessed by Respondent.
13. Prior to filing his claim with the Commission on October 6, 1982, Complainant filed civil actions against Respondent in the Concord and Milford District Courts on November 2, 1981 and June 6, 1982, respectively.
14. These actions involved claims of marital status discrimination based on actions which took place prior to June 10, 1982.
15. On November 4, 1982, subsequent to receiving notice of Complainant's action before the Commission, Respondent served Complainant with a demand for rent and a notice to quit his leased premises.

III. Conclusions of Law

A. Respondent's Motion to Dismiss

Prior to the hearing of this matter Respondent filed motions to dismiss asserting the grounds of lack of jurisdiction and res judicata. As Complainant's claims arise out of actions taken by both parties subsequent to June 10,

1982, the Commission finds that it has jurisdiction to issue its own independent order in this matter and denies Respondent's motions to dismiss.

B. Complainant's Marital Status Discrimination Claim

This case presents an issue of first impression before the Commission concerning the interpretation of the term "marital status" as used in RSA 354-A:8, V(b)¹. The Complainant's claim is that he is being discriminated against on the basis of marital status because he is required to pay \$10 per month more rent for living with a female friend than he would have to pay if this group of two constituted a married couple.² From the facts set forth above it is clear that the Respondent has treated this unmarried couple differently than similarly situated married couples.

The Respondent, on the other hand, asserts that he is not discriminating on the basis of marital status as the \$10 surcharge is applied equally to all tenants with unrelated additional occupants without regard to the particular tenant's marital status. Under this view a married couple and an unmarried individual who take in an unrelated boarder are treated equally as each would be assessed the \$10 monthly rental surcharge.

¹ This statute makes it an unlawful discriminatory practice:

for any person, being the owner, lessee, sublessee, assignee, managing agent or other person having the right to rent or lease a dwelling or commercial structure or being in the business of selling or renting dwellings or commercial structures:

...

(b) To discriminate against any person in the terms, conditions or privilege of sale or rental of a dwelling or commercial structure, or in the provision of services or facilities in connection therewith, because of age, sex, race, color, marital status, physical or mental handicap, religion or national origin.

² Under the facts of this case, the analysis of this claim is equally applicable to Complainant's claim involving the surcharge for his male friend.

It is thus clear that the parties differ, not on the underlying facts of this case, but in the way these facts are to be applied to the statutory prohibition against discrimination on the basis of marital status. RSA 354-A:8,V. Respondent Fortier views the marital status portion of RSA 354-A:8,V(b) as solely forbidding a discriminatory distinction between an unmarried individual and a married couple. Complainant Piper however, interprets "marital status" more broadly, applying it to treatment which differs on the basis of the individual's relationship to another.

In a case involving this same issue of law the Massachusetts Commission Against Discrimination (MCAD) referred to these two conflicting views as the "individual" and "relational" interpretations of the term marital status and described them as follows:

Under the individual definition, marital status is an attribute of each individual person, and describes that person's status or condition with respect to marriage. Under this definition, a landlord may not treat a person with one marital status (such as divorced) differently than a similarly situated person with a different marital status (such as single). In making a decision about an individual person, a landlord may not lawfully consider that person's marital status. The individual definition, however, looks only at the individual person.

The relational definition of marital status describes the relationship between persons and whether they are married, unmarried or previously married and now divorced or separated. In this case, under the relational definition, a landlord is prohibited from treating one couple with a certain marital status (such as married) differently than a similarly situated couple with a different marital status (such as unmarried). Interpreted in this way, the law forbids the consideration of a marital status of a couple in making [a] rental decision.

Roy v. O'Brien, EOH Rep. para. 17,525, p. 17583, January 27, 1981, (Mass. Comm. Against Discrimination, dec. June 27, 1980).

The question we are now left with is which of these conflicting interpretations is an accurate expression of the legislative intent behind RSA 354-A:8,V(b).

As a starting point, we note that the relational definition advocated by the Complainant is inconsistent with the express language of RSA 354-A:8,V which only prohibits marital status discrimination against "any person" with no reference to discrimination against unmarried couples. See McFadden v. Elma Country Club, 613 P.2d 146, 151 (1980).

This conclusion is supported by the legislative history of the marital status provision. In his remarks in support of the 1975 amendment adding marital status to the list of prohibited bases of discrimination Senator Foley, the bill's sponsor, stated:

"The purpose of this bill is [to insure] that a person cannot be singled out because he or she is divorced, single or widowed."

Senate Journal, January Session, 1975, Vol. I, p. 73.
(Emphasis added).

In addition, adoption of the relational definition advocated by the Complainant would necessarily extend the protections of RSA 354-A:8,V to unmarried couples who are otherwise living as man and wife.³ Such a policy could result in conflict with the provisions of RSA 645:1 and RSA 645:3, which establish criminal penalties for fornication and adultery, and were enacted prior to the legislature's inclusion of the category of marital status discrimination in RSA 354-A. In light of these statutes it is doubtful that the legislature was contemplating differing treatment of unmarried couples in housing when it declared discrimination on the basis of marital status to be a "[menace to] the institutions and foundation of a free democratic state and [a] threat to the peace, order, health, safety and general welfare of the state and its inhabitants". See RSA 354-A:1.

For the foregoing reasons the Commission finds no illegal housing discrimination on the basis of marital status in this case. The complaint is hereby dismissed.

C. Complainant's Retaliation Claim

As the Respondent's action imposing a \$10 monthly rental surcharge on Complainant was not prohibited by RSA 354-A and as

³ No evidence of a sexual relationship existing between Complainant and any of his surcharged boarders was presented at the hearing.

the Respondent therefore retained his right to pursue a claim against Complainant for non-payment of rent, Complainant's retaliation claim (#HMS 2333-90-48) is also hereby dismissed.

SO ORDERED:

5/1/84
Date

Robert J. Normandeau
Robert J. Normandeau
Commissioner *RJ.*

5/2/84
Date

Gail F. Paine
Gail F. Paine
Commissioner

4-28-1984
Date

Lionel M. Johnson
Lionel Johnson
Commissioner